

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



# 74-2056

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

To be argued by  
PHYLIS SKLOOT BAMBERGER

-----X  
UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

-v.-

RICHARD PATRICK CARRIGAN,  
Defendants-Appellants.  
-----X

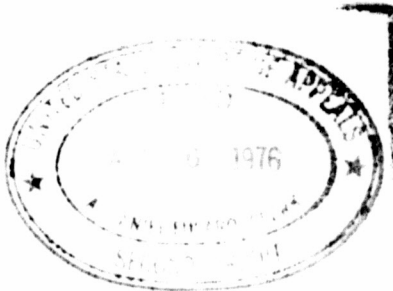
B  
P/S  
Docket No. 74-2056

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APPENDIX FOR APPELLANT  
RICHARD PATRICK CARRIGAN

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY  
Attorney for Appellant  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
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**PAGINATION AS IN ORIGINAL COPY**



**CRIMINAL DOCKET**  
**UNITED STATES DISTRICT COURT**

D. C. Form No. 100 Rev.

| TITLE OF CASE                                                                            | ATTORNEYS                                                                                 |
|------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <b>C L O S E D</b>                                                                       | <b>For U. S.:</b>                                                                         |
| <b>THE UNITED STATES</b>                                                                 |                                                                                           |
| <b>vs.</b>                                                                               |                                                                                           |
| <b>RICHARD PATRICK CARRIGAN</b><br>(Jail) <i>15 Constitution Ave</i><br><i>E. French</i> | <b>Hon. James M. Sullivan, Jr.</b><br>Cullum<br>French                                    |
| <b>ROBERT EDWARD WHITE</b><br>(Jail) <i>1234 St. Ave, N.Y.</i>                           |                                                                                           |
|                                                                                          | <b>For Defendant:</b><br>Armand Riccio for both - assigned<br><i>1286 W. 141 St, N.Y.</i> |

| STATISTICAL RECORD | COSTS      | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|--------------------|------------|------|---------------------|------|-------|
| J.S. 2 mailed      | Clerk      | 7/1  | 245,785             |      |       |
| J.S. 3 mailed      | Marshal    |      |                     |      |       |
| Violation          | Docket fee |      |                     |      |       |
| Title              |            |      |                     |      |       |
| Sec.               |            |      |                     |      |       |

| DATE    | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1974    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Mar 13  | Filed Indictment-viol: 18 ISC 2314 and 2-interstate transportation of stolen goods and aiding and abetting 1 ct JS2                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Mar 20  | Filed appearance bond Robert White-surety-Peerless Ins Co, Albany, no money                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Mar 18  | Filed appearance bond Richard Carrigan-surety-Peerless Ins Co, Albany-no money                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Mar 18  | Deft Carrigan is arraigned and pleads not guilty. Bail reduced to \$5,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| June 10 | Deft White is arraigned and pleads not guilty. Bail reduced to \$5,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| June 10 | Trial moved by U. S. Attorney, jury drawn and sworn. Mr. French will be in NYC June 11 at 2nd CCA to argue a case so this trial is adjourned to Wednesday, June 12 at 9:30 AM                                                                                                                                                                                                                                                                                                                                                                                                                  |
| June 12 | Trial continued.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| June 13 | Trial continued. Govt rests. Mr. Riccio moves for dismissal on grounds stated. Motion denied. Mr. Riccio moves for continuance of trial until Monday, June 17, because he represents a client in jail, and is to appear for bail on his behalf. Motion granted. trial in recess to 9:30 AM Monday, June 17. Juror No. 2-Poole is excused from further consideration of this case, alt No. 1 takes her place. Counsel for both sides and defts stipulate on record that in the event something should happen to two or more jurors that they will continue with the remaining number of jurors. |

DATE  
1974

PROCEEDINGS

|         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 17 | 10:10 AM Mr. Riccio sums up for defts. 10:40 AM Mr. French sums up for Govt<br>11:02 AM Judge MacMahon charges the jury and they retire at 11:37 AM in charge of two sworn officers, to consider their verdict. Alternate juror is excused from further consideration of case.<br>The Jury, at 3:26 PM come into court and say they find the defendants Carrigan and White GUILTY AS CHARGED. Mr. Riccio moves to set aside the verdict as to both defendants, on grounds stated. Motions denied. Mr. French moves to reinstate \$50,000 bail for each defendant. Motion denied and defendants are continued on \$5,000 bail pending sentence. Pre-sentence investigation ordered. Sentence set for July 23 at 10 A. M. in Auburn, NY<br>Filed Govt exhibits 1-4,6-8, Court exhibit 1 |
| July 19 | The Court advised defendant Carrigan of his right to speak in his own behalf, defendant spoke, his attorney spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of eight years on count one. Defendant is granted the right to appeal, bail set at \$20,000. Remanded to custody of Marshal.<br>LIMacM JS3<br>The Court advised defendant White of his right to speak in his own behalf, defendant declined, his attorney spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of eight years on count one. Defendant is granted the right to appeal, bail set at \$20,000. Remanded to custody of Marshal pending posting of bail. LIMacM JS3                 |
| July 19 | Filed Notice of Appeal-Carrigan<br>Filed Notice of Appeal-White                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| y 23    | Sent copies of docket sheet and Notices of Appeal to US Court of Appeals<br>Sent copies of Notice of Appeal to US Atty                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| July 22 | Filed Judgment-Carrigan, 2 copies Marshal, 1 cpy Probation<br>Filed Judgment-White-2 copies Marshal, 1 cpy Probation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| July 26 | Filed Peerless Ins Co bond \$20,000. and bond form-Carrigan(for appeal)<br>Filed Peerless Ins Co bond \$20,000 and bond form-White-appeal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Aug 2   | Filed Forms A-Carrigan & White-signed by Judge MacMahon                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Aug 9   | Filed CJA 20 form 5-Corrigan<br>Filed CJA 20 form 5-White                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Aug 26  | Filed Motion for Sept 4 to return property of defts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Aug 27  | Filed notice of service of motion-certificate of service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Sept. 4 | Motion for return of defendants' Property.- Motion granted. \$1,000 to Carrigan & \$1,800 to White. No opposition by gov't. Gov't to submit Order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| /9/74   | Order signed by Judge Foley direction release of \$1800 to Robert White, and \$1000.00 to Richard Carrigan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Oct. 18 | Sent Certified copy of Record on Appeal to CCA, 2nd Cir.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3/31/75 | Filed Order from U.S.Court of Appeals, second circuit dismissing appeal from judgments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 3/31/75 | Stay of sentence being vacated by above order, delivered Commitment to the U. S. Marshal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4/18/75 | Mr. Paul French heard in Argument on Motion for Revocation of Bail<br>Motion granted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 4/22/75 | Filed letter from Carrigan and White requesting information on steps to be taken to reinstate their bail.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4/23/75 | Filed letter from Carrigan and White to Charles W. Ryan, Esq. .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 5/7/75  | Filed Response to Complaint from Frederick G. Ziehm                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 5/9/75  | Filed letter to defts. from Judge Foley dated April 22, 1975                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 6/3/75  | Filed executed commitment re: Richard Patrick Carrigan May 27, 1975-<br>Lewisburg, Pa.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 6/6/75  | Filed Endorsement denying reduction of sentence, etc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 6/25/75 | Filed Commitment of White                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

DATE

PROCEEDINGS

7/25/75 Filed Decision of Circuit Court of Appeals granting motion to vacate the dismissal of appeal.

7/31/75 ✓ Filed Application for copy of Court records and endorsement of Judge MacMahon attached thereto granting same. Carrigan.  
Forwarded copy of endorsement and prior arrest record to Carrigan

11/17/75 Filed Copy of Briefing Schedule of U. S. Court of Appeals.

3/1/76 ✓ Filed transcript of proceedings held June 10, 1974 in Auburn, N.Y. before Hon. Lloyd F. MacMahon.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs.

RICHARD PATRICK CARRIGAN and  
ROBERT EDWARD WHITE

---

INDICTMENT

Cr. No. 7-1 No. 3 R 111

(VIO: Title 18, U.S.C.,  
Sections 2314 and 2)

COUNT I

THE GRAND JURY CHARGES:

That from on or about the 7th day of March, 1974,  
to on or about the 8th day of March, 1974, RICHARD PATRICK  
CARRIGAN and ROBERT EDWARD WHITE, the defendants herein,  
wilfully, knowingly and unlawfully did transport in interstate  
commerce from Gloversville, in the State and Northern District  
of New York, to Haverhill, in the State and District of  
Massachusetts, stolen goods, wares and merchandise, that is,  
a quantity of leather goods consisting of raw and treated cow  
hides, goat skins, suede leather skins and ladies cow hide  
coats, of the value of approximately \$37,475.00, knowing the  
same to have been stolen.

In violation of Title 18, United States Code,  
Sections 2314 and 2.

A TRUE BILL

James M. Hillman  
FOREMAN

James M. Hillman  
UNITED STATES ATTORNEY



3/18/74 Deft Carrigan is arraigned and pleads not guilty. Bail reduced to \$5,000.

Remanded to custody of Marshal.

Deft White is arraigned and pleads not guilty. Bail reduced to \$5,000.

Remanded to custody of Marshal.

6/10/74 Trial moved by US Atty. Jury drawn and sworn. Trial adjourned to June 12 at 9:30 AM

6/12/74 Trial continued

6/13/74 Trial continued. Govt rests. Mr. Riccio moves for dismissal on grounds stated. Motion denied. Trial moved for continuance to June 17.

6/17/74 10:10 AM Mr. Riccio sums up for defts. 10:40 AM Mr. French sums up for Govt  
11:02 AM Judge MacMahon charges the jury, and they retire at 11:37 AM in charge of two sworn officers, to consider their verdict. The Jury, at 3:26 PM come into Court and say they find each defendant GUILTY AS CHARGED. Mr. Riccio moves to set aside the verdict on grounds stated. Motion denied. Mr. French moves to reinstate \$50,000 bail pending sentence. Motion denied. Defendants are continued on \$5,000 bail. Pre-sentence investigation ordered. Sentence set for July 23 at 10 AM at Auburn.

7/19/74 The Court advised defendant Carrigan of his right to speak in his own behalf, defendant spoke, his attorney spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of eight years on count one. Defendant is granted the right to appeal, bail set at \$20,000. Remanded to custody of Marshal.

The Court advised defendant White of his right to speak in his own behalf, defendant declined, his attorney spoke. Defendant is sentenced to be confined in any institution designated by the Attorney General for a period of eight years on count one. Defendant is granted the right to appeal, bail set at \$20,000. Remanded to custody of Marshal, pending posting of bail.

Motion for return of deft's property. Motion granted \$1,000 to Carrigan \$1,800 to White-no opposition by gov't. Gov't submit Order

73-CR-11

UNITED STATES DISTRICT COURT

NORTHERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

RICHARD PATRICK CARRIGAN

and ROBERT EDWARD WHITE

## INDICTMENT

VIO: Title 18, U.S.C., Sections  
2314 and 2

INTERSTATE TRANSPORTATION OF  
STOLEN GOODS and AIDING & ABETTING  
One Count

A true bill,

Foreman.

Filed in open court this \_\_\_\_\_ day  
of \_\_\_\_\_, A. D. 19\_\_\_\_

Clerk.

Bail, \$\_\_\_\_\_

22

23

24

25

(The following proceedings took place in  
the presence of the jury).

THE COURT: The court and the jury have  
different functions. It is now my function and

1 duty to instruct you on the law that applies  
2 to this case, and it is your duty to accept  
3 the law as I give it to you, whether or not  
4 you agree with it, and to apply it to the facts  
5 as you find them, and in short I am the exclusive  
6 judge of the law, you on the other hand are the  
7 exclusive judges of the facts. You and you  
8 alone decide what weight, what effect and what  
9 value you will give to the evidence. You  
10 decide whether or not to believe a witness,  
11 and of course ultimately you decide the guilt  
12 or innocence of each defendant on trial in this  
13 case.

14 You are not to conclude from any rulings  
15 I have made throughout this trial or any  
16 questions that I have asked that I have any  
17 opinion one way or another as to the guilt or  
18 innocence of either of these defendants. That  
19 decision is entirely up to you.

20 Now finding the fact is merely a process  
21 by which you, the jury, consider the exhibits  
22 and the testimony of all the witnesses, sift  
23 out what you believe, weigh it in the scale of  
24 your reasoning powers and draw such conclusions  
25 as your experience and common sense tell you

1 the evidence supports and justifies, and decide  
2 just where the truth lies in this case.

3 In this connection it is your memory of  
4 the evidence that controls, it is not the way  
5 I remember it, not the way the counsel remember  
6 it, if your memory squares with what the law-  
7 yers said, what they told you as to their  
8 version of the evidence during their closing  
9 arguments, you may accept what they said, but  
10 to the extent that you have a different memory,  
11 you are bound by your oath to rely on your  
12 memory.

13 Now in this connection sometimes juries  
14 are only out a little while and they send me  
15 a note saying they want the entire transcript  
16 or entire testimony of a witness. The court  
17 reporter's notes are not transcribed right  
18 away so there is no transcript, and you are  
19 supposed to rely on your memory. If you can't  
20 remember, one of your fellow jurors can remember  
21 and thereby help you refresh your recollection,  
22 but if after indulging in that process you still  
23 would like to have the testimony of any witness  
24 read back to you, send me a note and the court  
25 reporter will read it back. But I ask you to



1 use some restraint about this. This has been  
2 a very simple case, the evidence isn't very  
3 complicated, and I am sure that one or more  
4 of you can remember it fully and you will all  
5 remember it after fully searching your memory  
6 and discussing it.

7 Now one of your most important functions  
8 is to determine just where the truth lies.  
9 It is your exclusive function to decide which  
10 witness' you will believe, and this is so as  
11 to every witness, whether called by the Govern-  
12 ment or by the defense.

13 You are not to be influenced by the number  
14 of witnesses called by either side or by the  
15 number of documents received in evidence, you  
16 are concerned not with the quantity of the  
17 evidence but with the quality of the evidence.

18 The first test which you should apply in  
19 determining the trustworthiness of a witness  
20 is to measure what he says against your plain  
21 every day common sense. You are not bound to  
22 believe unreasonable statements or to accept  
23 testimony that defies your common sense or  
24 insults your intelligence just because the  
25 statements are made in a courtroom on a witness

1 stand under oath.

2 You saw the witness' in this case. In  
3 deciding whether to believe a witness you should  
4 consider not only what is said but also his  
5 conduct and his manner and his behavior on the  
6 stand. I saw you watching the witnesses here  
7 with particular care as they were testifying,  
8 obviously you were sizing them up. How did  
9 the witness impress you? Was the witness being  
10 frank with you? Was he being evasive? Did  
11 his version of the facts appear to be straight-  
12 forward? Was he trying to conceal some of the  
13 facts? Was he just parroting answers? Did he  
14 have any motive to testify falsely? Is he  
15 interested in any way in the outcome of this  
16 case? How strong or weak was his memory of  
17 important events? In short, can you rely on  
18 him, can you trust him, was he hostile or  
19 friendly to any party?

20 You ought to consider also his opportunity  
21 to know the facts about which he testified and  
22 the probability or improbability of what he  
23 said. How does his testimony add up when  
24 considered with all the evidence? How far does  
25 his story check out with the other evidence?

1 Are there any inconsistencies in his story,  
2 and if so, how important are they?

3 Now the witnesses Greenberg, Ragone and  
4 Southwick testified that they had participated  
5 in the crime charged here. If you believe that,  
6 then they were accomplices and you should con-  
7 sider that fact in testing their credibility  
8 and weighing their testimony. Obviously a  
9 witness is not incapable of telling the truth  
10 about occurred simply because he is an accom-  
11 plice. Nevertheless, you must examine an  
12 accomplice's testimony with special care and  
13 act upon it with caution.

14 In the prosecution of a crime, the Govern-  
15 ment is frequently called upon to use persons  
16 who are accomplices, often it has no choice.  
17 They are properly used. After all the Govern-  
18 ment must rely upon witnesses to transaction  
19 such as they are, otherwise in many instances  
20 it would be difficult to detect and to prosecute  
21 wrongdoers. There is no requirement that the  
22 testimony of an accomplice be corroborated.  
23 That simply means that his testimony be supported  
24 or backed up by other evidence. Conviction  
25 may rest upon the testimony of an accomplice

1 alone if you believe it.

2 The credibility of Greenberg, Ragone and  
3 Southwick like that of all the witnesses is  
4 for you and you alone to determine, taking  
5 into account the interest of the witness, his  
6 motive, any inducement or consideration he may  
7 have received or he may hope to receive from  
8 the Government, any hostility he may bear toward  
9 any defendant, any other evidence you recall  
10 which may reasonably be considered to influence  
11 and color his testimony.

12 Now the defendant Richard Carrigan testified  
13 as a witness. He was not required by law to  
14 do so, and his appearance as a witness was  
15 entirely voluntary on his part. If he had not  
16 testified his failure to take the stand could  
17 not have been considered by you in any manner  
18 in determining his guilt or innocence, but  
19 having taken the stand the law requires that  
20 his testimony be judged and appraised by the  
21 same standards supplied to the testimony of any  
22 other witness, giving consideration of course  
23 to his background, to his personality and to  
24 his natural interest in the outcome of this  
25 trial.

1           The defendant Carrigan testified that he had  
2           been convicted of a crime in the past. This  
3           was brought out on cross-examination. You may  
4           consider that fact in determining his credibility  
5           and the weight to be given to his testimony,  
6           but you may not consider his conviction of any  
7           other crime as evidence that he committed the  
8           crime charged here.

9           The defendant Edward White did not take the  
10          stand. A defendant is not required to take  
11          the stand and testify in his own behalf. He  
12          has a constitutional right to depend and place  
13          his faith entirely upon the evidence presented  
14          by the Government. He has no burden of proof  
15          to sustain in this case. He has denied the  
16          charges made against him by his plea of not  
17          guilty and he is presumed to be innocent. The  
18          fact that White did not testify cannot be  
19          taken into consideration by you in any manner.  
20          You may not permit that fact to weigh in the  
21          slightest degree against him, nor should that  
22          fact even enter into your discussions or  
23          deliberations in any way in determining his  
24          guilt or innocence.

25          Now if you find that any witness has

1 deliberately and willfully lied with respect  
2 to any material facts in his or her testimony  
3 offered at this trial, you may follow either  
4 one of two courses; you may accept as much of  
5 the witness' testimony as you believe, or if  
6 you wish you may reject his entire testimony.

7 Before discussing the crime charged here,  
8 I want to remind you that an indictment is a  
9 mere accusation. It is not evidence of the  
10 truth of the charge made, and you are to draw  
11 no inference of guilt from the mere fact that  
12 the defendant has been indicted. An indict-  
13 ment simply means that a defendant has been  
14 accused of a crime, and I have said to you that  
15 the defendant has denied--both defendants have  
16 denied the charge here by their pleas of not  
17 guilty, and the defendant Carrigan denied his  
18 guilt on the stand.

19 Now no defendant has any burden of proof  
20 to sustain in this case. He is under no  
21 obligation to produce any witnesses. He is  
22 presumed to be innocent, and this presumption  
23 of innocence continues throughout the trial  
24 and during the deliberations of the jury. This  
25 presumption of innocence is overcome when and

1                   only when the Government establishes the  
2                   guilt of a defendant beyond a reasonable doubt.

3                   Now what do I mean by beyond a reasonable  
4                   doubt? As the phrase implies, a reasonable  
5                   doubt is a doubt that is based upon reason, a  
6                   reason which appears in the evidence or in the  
7                   lack of evidence. It is not some vague,  
8                   speculative, imaginary doubt, nor a doubt based  
9                   upon emotion, sympathy or prejudice, or based  
10                  upon what some juror might regard as an un-  
11                  pleasant duty. The Government is not required  
12                  to prove a defendant guilty beyond every  
13                  possible doubt nor to an absolute or a mathe-  
14                  matical certainty, because such measure of  
15                  proof is usually impossible in human affairs.

16                 You should review all of the evidence as  
17                 you remember it. Sift out what you believe,  
18                 discuss it, analyze it, weigh and compare your  
19                 view of the evidence with your fellow jurors.  
20                 If that process produces a solemn belief or  
21                 conviction in your mind such as you would be  
22                 willing to act upon without hesitation if this  
23                 were an important matter of your own, then you  
24                 may say that you have been convinced beyond a  
25                 reasonable doubt.



1 On the other hand, if after that process  
2 your mind is wavering or so uncertain that  
3 you would hesitate before acting if this were  
4 an important matter of your own, then you have  
5 not been convinced beyond a reasonable doubt  
6 and your verdict must be not guilty.

7 Now the indictment in this case charges  
8 that from on or about March 7, 1974 to on or  
9 about March 8, 1974, Richard Patrick Carrigan  
10 and Robert Edward White, the defendants,  
11 wilfully, knowingly and unlawfully did trans-  
12 port in interstate commerce from Gloversville,  
13 in the State and Northern District of New  
14 York, to Haverhill, in the State and District  
15 of Massachusetts, stolen goods, wares and  
16 merchandise, that is, a quantity of leather  
17 goods consisting of raw and treated cow hides,  
18 goat skins, suede leather skins and ladies  
19 cow hide coats, of the value of approximately  
20 \$37,475.00, knowing the same to have been  
21 stolen.

22 In essence each defendant is charged with  
23 alleged violations of the United States  
24 statute which provides in pertinent part as  
25 follows: "Whoever transports in interstate



1 commerce any goods, wares or merchandise of  
2 the value of \$5,000 or more, knowing the same  
3 to have been stolen, shall be guilty of a  
4 crime."

5 You should consider each defendant separately.  
6 In order to convict a defendant of the crime  
7 charged here, the Government must prove to your  
8 satisfaction beyond a reasonable doubt each  
9 of the following elements: (1) that from on  
10 or about March 7, 1974 to on or about March 8,  
11 1974, the defendant whom you are considering  
12 knowingly and wilfully transported the mer-  
13 chandise described in the indictment in inter-  
14 state commerce. or that he knowingly aided and  
15 abetted or knowingly caused another or others  
16 to do so. This element, the first element is  
17 satisfied therefore if you find that the  
18 defendant whom you are considering knowingly  
19 and wilfully aided and abetted or caused another  
20 or others to transport the merchandise from  
21 Gloversville, New York to Haverhill, Massachu-  
22 setts.

23 The second element is that the merchandise  
24 was stolen. The third element is that the  
25 defendant whom you are considering knew that

1 the merchandise had been stolen.

2 Now the second element is satisfied if you  
3 find anyone--it doesn't have to be the defendant--  
4 knowingly took these leather goods from the  
5 Frenville Company with an intent to steal it  
6 or to deprive Frenville Company of the benefit  
7 of ownership.

8 The fourth element is that the value of  
9 the merchandise was more than \$5,000. Value  
10 simply means the price which a willing buyer  
11 would pay and which a willing seller would  
12 accept.

13 You have heard me say it is not necessary  
14 for the Government to prove that these defendants  
15 themselves transported this merchandise, that  
16 it is sufficient that the Government proves  
17 beyond a reasonable doubt that they aided and  
18 abetted or caused another to transport these  
19 goods. The law provides that a person who  
20 aids and abets another to commit a crime is  
21 just as guilty of that crime as if he committed  
22 it himself. Accordingly you may find the  
23 defendant whom you are considering guilty of  
24 the crime charged in the indictment if you  
25 find beyond a reasonable doubt that the

1 defendant aided or abetted some other person  
2 in the commission of the crime charged.

3 Here the Government contends that each of  
4 the defendants now on trial aided and abetted  
5 Ragone and Southwick to commit the crime of  
6 transporting stolen merchandise in interstate  
7 commerce, with knowledge of the fact that the  
8 merchandise had been stolen.

9 Before you can convict a defendant for  
10 aiding and abetting, however, you must find  
11 that the crime was committed by another, here  
12 Ragone and Southwick, and that the defendant  
13 whom you are considering knew the goods had  
14 been stolen and consciously associated himself  
15 with the criminal venture with the intent that  
16 his conduct would help it succeed in transport-  
17 ing the stolen goods in interstate commerce.

18 You must be convinced beyond a reasonable  
19 doubt that the defendant was doing something  
20 to aid the crime or to forward the crime of the  
21 other person, that he was a conscious, knowing  
22 participant in the crime with a stake in its  
23 success, rather than a mere witness or spectator  
24 or bystander on the scene of a crime committed  
25 by another.

1                   Now possession of property recently stolen  
2                   is not satisfactorily explained, is ordinarily  
3                   a circumstance from which you the jury may  
4                   reasonably draw the inference and conclusion  
5                   in light of the surrounding circumstances  
6                   shown by the evidence that the person in possess-  
7                   ion knew that the property had been stolen,  
8                   and not only knew that it was stolen but also  
9                   participated in some way in the theft of the  
10                  property. And possession in one state of  
11                  property recently stolen in another state if  
12                  not satisfactorily explained is ordinarily a  
13                  circumstance from which you may draw the  
14                  inference and find in light of the surrounding  
15                  circumstances shown by the evidence that the  
16                  person in possession not only knew it to be  
17                  stolen property but also transported it or  
18                  caused it to be transported in interstate  
19                  commerce.

20                  The term "recently" is a relative term and  
21                  has no fixed meaning. Whether property may be  
22                  considered as recently stolen depends upon the  
23                  nature of the property and all the facts and  
24                  circumstances shown in the evidence. The longer  
25                  a period of time since the theft, the more

1                   doubtful becomes the inference which may  
2                   reasonably be drawn from unexplained possession.

3                   If you find beyond a reasonable doubt from  
4                   the evidence that the leather goods described  
5                   in the indictment were stolen, and that while  
6                   recently stolen the property was in the  
7                   possession of the accused in another state,  
8                   you may from those facts draw the inference  
9                   not only that the leather goods were possessed  
10                  by the accused with knowledge of it, but  
11                  with knowledge of it that the property was  
12                  stolen, but also that the accused transported  
13                  the goods or caused them to be transported in  
14                  interstate commerce with knowledge of the fact  
15                  they were stolen.

16                  Unless possession of the recently stolen  
17                  property by the accused or possession by the  
18                  accused in such other state is explained to the  
19                  satisfaction of the jury by other facts and  
20                  circumstances shown in the evidence.

21                  In considering whether possession of recently  
22                  stolen property has been satisfactorily ex-  
23                  plained, you are reminded that in the exercise  
24                  of constitutional rights the defendants need  
25                  not take the witness stand and testify. There



1 may be opportunity to explain possession by  
2 showing other facts and circumstances independent  
3 of the testimony of the defendants.

4 You will also bear in mind that the law  
5 never imposes upon a defendant in a criminal  
6 case the burden or duty of calling any witnesses  
7 or producing any evidence. It is the exclusive  
8 function of the jury to determine whether the  
9 fact and circumstances are shown by the evidence  
10 warrant an inference which the law permits you  
11 to draw from possession of recently stolen  
12 property. If any possession the accused may  
13 have had of recently stolen property is con-  
14 sistent with innocence, or if you entertain a  
15 reasonable doubt of guilt, you must acquit the  
16 accused.

17 Now possession is of two kinds, it can be  
18 actual possession, which simply means having  
19 direct, physical control over a thing at a  
20 given time, such as holding it in one's hand  
21 or carrying it in one's car or directing where  
22 it go. Constructive possession simply means  
23 the power at a given time to exercise dominion  
24 or control over a thing either directly or  
25 through another person or persons.

1           You will note that in describing the ele-  
2           ments of the crime I have said that the  
3           defendant must have acted knowingly. An act  
4           is done knowingly if it is done voluntarily  
5           and purposefully, the exercise of a free choice,  
6           and not because of mistake, accident, mere  
7           negligence or other innocent reasons.

8           In determining whether a defendant acted  
9           knowingly and intentionally it is obviously  
10          impossible to look into his mind.. Knowledge  
11          and intent, however, may be proved by circum-  
12          stantial evidence. You may thus infer knowledge  
13          and intent from a defendant's conduct, his act,  
14          his statement and from all the surrounding cir-  
15          cumstance    In short, actions speak louder  
16          than words when we are trying to decide what is  
17          in a person's mind.

18          You will note also that in describing these  
19          elements I have said that the defendant must  
20          have acted wilfully. You will note that the  
21          indictment uses the word unlawfully, knowingly  
22          and wilfully. This means that the defendants  
23          must know what they are doing, that he con-  
24          sciously does the act which the law prohibits  
25          and that he intended to commit those acts. It

1 does not mean that he must know that his acts  
2 violate the law, he simply must consciously  
3 know what he is doing.

4 An act is done knowingly if it is done  
5 voluntarily and purposely and not because of  
6 mistake, negligence or other innocent reasons.

7 An act is wilfull if it is done knowingly  
8 and deliberately and with an evil motive or  
9 purpose.

10 Unlawfully simply means that the act is  
11 something prohibited by law.

12 In determining whether a defendant acted  
13 knowingly and intentionally you should consider  
14 all of the circumstances shown in the evidence.  
15 You should consider such evidence as you recall  
16 and believe as to whether a defendant tried to  
17 cover up what he was doing, as to whether he  
18 tried in any way to conceal his identity, as  
19 to whether he dealt in cash and if so why, and  
20 any other circumstances shown in the evidence  
21 which tends to show whether he acted with a  
22 conscious and guilty knowledge.

23 You should consider each defendant separately.  
24 If you find that the Government has failed to  
25 prove to your satisfaction beyond a reasonable



1                   doubt each of the four elements of the crime  
2                   as I have given them to you in the instructions,  
3                   or that the defendant whom you are considering  
4                   did not knowingly aid and abet another in the  
5                   commission of the crime charged in the indict-  
6                   ment, you should not hesitate to return a  
7                   verdict of not guilty, as to that defendant.

8                   On the other hand, if you find that the  
9                   Government has proved to your satisfaction  
10                  beyond a reasonable doubt all four elements of  
11                  the crime which I have given to you, or the  
12                  defendant to whom you are considering knowingly  
13                  aided and abetted another in the commission of  
14                  the crime charged in the indictment, you should  
15                  return a verdict of guilty as to that defendant.

16                 You are instructed that the question of  
17                 possible punishment of the defendant in the  
18                 event of a conviction is no concern of yours  
19                 and should not in any sense enter into or in-  
20                 fluence your deliberation. The duty of impos-  
21                 ing sentence in the event of a conviction rests  
22                 exclusively upon the court.

23                 The function of the jury is to weigh the  
24                 evidence in the case and determine the guilt  
25                 or the innocence of the defendant solely upon

1 the basis of such evidence.

2 When you retire to the jury room, you will  
3 treat one another with consideration and res-  
4 spect, as I know you will. If differences of  
5 opinion arise, your discussions should be  
6 dignified, calm, intelligent.

7 Your verdict must be based on the evidence  
8 and the law, the evidence which was presented  
9 in this case as you remember it and the law as  
10 I have given it to you in this charge.

11 You are entitled to your own opinion. No  
12 juror should acquiesce in a verdict against his  
13 individual judgment. Nevertheless I would point  
14 out that no one should enter a jury room with  
15 such pride of opinion that he would refuse to  
16 change his mind no matter how convincing the  
17 arguments of his fellow jurors. Discussion and  
18 deliberation are part of our jury process and  
19 your deliberations should be approached in that  
20 spirit. Talk out your differences. Each of you  
21 should decide the case for himself after  
22 thoroughly reviewing the evidence and frankly  
23 discussing it with your fellow jurors with an  
24 open mind and with a desire to reach a verdict.  
25 If you do that you will be acting in the true

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democratic process of the American jury system.

There are twelve of you on this jury, the remaining alternate will be excused before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury. Decide the issues submitted to you fairly and impartially and without fear or favor.

Now members of the jury if you find that the Government has failed to establish the guilt of the defendant beyond a reasonable doubt, you should acquit that defendant. If you find that a defendant has not violated the law, you should not hesitate for any reason to render a verdict of not guilty as to him. But on the other hand, if you find as to the defendant you are considering that the Government has established his guilt beyond a reasonable doubt, you should not hesitate because of sympathy nor any other reason to render a verdict of guilty.

1                   When you retire to your jury room, you  
2                   will elect from among your number a foreman  
3                   or forelady to speak for you, and your foreman  
4                   or forelady will return an oral verdict in  
5                   open court as to each defendant of guilty or  
6                   not guilty.

7                   Are there any exceptions, gentlemen?

8                   MR. RICCIO: No, sir.

9                   MR. FRENCH: The government has none.

10                  THE COURT: The alternate jurors now ex-  
11                  cused from further consideration of this case  
12                  until 9:30 tomorrow morning. Thank you.

13                  (The jury retired at 11:37 A.M.)

14                  (2:35 P.M. the jury was returned to the  
15                  courtroom).

16                  THE CLERK: Ladies and gentlemen of the  
17                  jury, have you agreed upon a verdict, and if  
18                  so how do you find and who shall say for you?

19                  JURY FOREMAN: Yes, we have reached a  
20                  verdict. Your Honor. We find both defendants  
21                  guilty as charged.

22                  THE CLERK: Harken onto your verdict,  
23                  ladies and gentlemen of the jury, as the court  
24                  has recorded it. You say you find both  
25                  defendants guilty as charged and so say you all?

1 CHORUS OF VOICES: Yes.

2 THE COURT: I want to thank you for the  
3 very conscientious attention you gave to this  
4 case. You are excused now until tomorrow  
5 morning at 9:30.

6 (The jury was excused and the following  
7 proceedings took place outside the presence  
8 of the jury).

9 MR. RICCIO: Your Honor, at this time I  
10 would move on behalf of the defendants on the  
11 verdict of the jury to have it set aside on  
12 the ground that the verdict is contrary to the  
13 weight of the evidence.

14 THE COURT: Motion denied.

15 MR. FRENCH: If the Court please, the Govern-  
16 ment now moves that the bail originally fixed  
17 in this case in the sum of \$50,000, which was  
18 reduced on the motion of counsel, Mr. Riccio,  
19 to \$5,000, be reinstated to the original sum  
20 fixed by the Court when the indictment was  
21 returned and was fixed by the Magistrate at the  
22 time of the arrest, and I show to the Court the  
23 Department of Justice record sheets of these  
24 two defendants, call the Court's attention to  
25 the fact the defendant Carrigan was released on